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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,887	07/14/2003	Steven J. Tallarida	STD 00.01 CIPD	5876
32047	7590	08/30/2006	EXAMINER	
GROSSMAN, TUCKER, PERREAULT & PFLEGER, PLLC 55 SOUTH COMMERCIAL STREET MANCHESTER, NH 03101				PHILOGENE, PEDRO
		ART UNIT		PAPER NUMBER
				3733

DATE MAILED: 08/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/618,887	TALLARIDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Pedro Philogene	3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 26 June 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

- 4)  Claim(s) 12-22 and 81-89 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 12,15-22,81-84 and 86-89 is/are rejected.

7)  Claim(s) 13,14 and 85 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_ .  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/4/04, 6/30/04, 8/30/04, 11/13/04, 5/2/05, 3/12/05  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_ .

***Election/Restrictions***

Applicant's election without traverse of Group II in the reply filed on 6/26/06 is acknowledged.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 15-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore et al. (RE.36.020).

With respect to claims 12, 22, Moore et al disclose a guide device, comprising a first element (10) having a longitudinal axis and a contact surface (22) mounted to a shaft, as best seen in FIG.1, a second element (24) with a contact surface movable with respect to the contact surface of the first element; as best seen in FIG.3; wherein when the guide device is placed on a non-spherical articular surface, both contacts surfaces make contact with the articular surface; as best seen in FIG.3.

With respect to claims 15-22, Moore et al disclose all the limitations; as claimed by applicant; for example the contact surfaces could be adapted to make contact with a plurality of points along either one of the AP or ML curves of an articular surface, the elements are both cannulated, and adapted to receive a tool or guide pin and surrounds a defect in an articular surface, and comprises a set of arms 12.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 81-84, 86-89 are rejected under 35 U.S.C. 102(e) as being anticipated by Mac Arthur (6,342,075).

With respect to claims 81-84,86-89, Mac Arthur discloses a method comprising a establishing an axis generally normal to the portion of the articular surface of a bone to be replaced; as best seen in FIGS. 8 a-d; excising only a portion of the articular surface adjacent to the axis, to create implant site, as best seen in FIG.8a, one of selecting an artificial implant corresponding to dimensions of the implant site from the set of variously-sized artificial implants, fabricating an artificial implant corresponding to the dimension of the implant site; and installing the implant into the implant site; asset forth in 13, lines 10-67, column 14, lines 1-67, column 15, lines 1-67, column 16, lines 1-40; and as best seen in FIGS.1-9

#### ***Allowable Subject Matter***

Claims 13,14, 85 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,595,193                    01-1997                    Walus et al.

5,700,264                    12-1997                    Zucherman et al.

4,998,938                    03-1991                    Ghajar et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
August 25, 2006

  
PEDRO PHILOGENE  
PRIMARY EXAMINER